

WRIT PETITION NO.23207 OF 2002

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3. The petitioner filed W.P.No.6512 of 2002 questioning the action of 2nd respondent in asking to pay enhanced license fee of Rs.8.25 lakhs on the basis of provisional population vide G.O.Rt.No.373, dated 14-2-2001. This

court passed an interim order in WPMP.No.8168 of 2002, which reads as under:

“ Learned counsel for the petitioner submits that there is no final publication of 2001 census. He has also submitted that the petitioner would pay the balance amount of license fee for the excise year 2002-2003 basing on the population figures of 2001 census as soon as the final publication is made.

In the writ affidavit, the petitioner has not disputed the powers of the respondents in collecting the licence fee on the basis of the final publication of the census of 2001.

Heard the learned Government Pleader for Prohibition and Excise appearing for the respondents.

Under the above circumstances, there shall be an interim direction to the respondents to accept the license fee from each of the petitioner at Rs.4,50,000/- and consider renewal of their licenses for the excise year 2002-2003, subject to further orders of this Court. However, the petitioner shall pay the balance amount for the entire excise year 2002-03 soon after the publication of 2001 census.”

Ultimately, the above writ petition ended in dismissal.

4. One K.Panduranga Rao filed W.P.No.5842 of 2002 questioning the order of the Government passed in G.O.Rt.No.373, dated 14.2.2001. An interim order of suspension came to be granted. According to the petitioner, he did not lift any stock from A.P.B.C.L. The 2nd respondent issued order in R.C.No.393/2002/A2, dated 3.5.2002 keeping the licence granted to the petitioner in abeyance in view of the interim order passed in WPMP.No.7315 of 2002 in W.P.No.5842 of 2002.

5. The 2nd respondent issued proceedings dated 29.10.2002 for collection of balance of license fee of Rs.3,75,000/-. The said proceedings read as under:

“ The attention of the Station House Officer, Bobbili and the Sub Divisional Prohibition and Excise Officer, Parvathipuram is drawn to the subject and reference cited and they are instructed to collect the balance of licence fee of Rs.3,75,000/- in respect of M/s.Surya Wines,

Bobbili as the writ petition No.6512 of 2002, dated 9.4.2002 filed by the licensee was dismissed by the Hon'ble High court of A.P.”

The above proceedings are under challenge, in this writ petition.

6. It is averred in the affidavit filed in support of the writ petition that he has not lifted any stock in the excise year 2002-03 in view of the order passed in WPMP.No.7315 of 2002 in W.P.No.5842 of 2002. Para 4 of the writ affidavit needs to be noted and it is thus:

“ 4. I submit that on the same day one K.Panduranga Rao, who is a rival trader has filed W.P.No.5842 of 2002 in this Honourable Court questioning the order of the Government passed in G.O.Rt.No.373, dated 14.2.2001 wherein the Government has allowed the revision filed by me. This Hon'ble Court was pleased to pass an order suspending the G.O. issued by the Government setting aside the order of cancellation of my license. I submit that in pursuance of the suspension order that has been granted by this Hon'ble Court I could not conduct the business even though the licence has been renewed in my favour. I submit that I have not lifted any stock from APBCL and in fact the 2nd respondent herein has passed an order in Rc.No.393/2002/A2 dated 3.5.2002 stating that the license granted in my favour is kept in abeyance. I submit that the order that has been passed in WPMP.No.7315 of 2002 in W.P.No.5842 of 2002 dated 4.4.2002 is still in force. I submit that on legal advise I was informed that similar orders passed by the Government in allowing the revisions were a subject matter in a batch of writ petitions and this Hon'ble Court in a judgment reported in VISWANATHA RAVI KUMAR AND OTHERS V. GOVERNMENT OF A.P. ^[1] has set aside the orders passed by the Government. In view of the same I have not taken any steps for vacating the interim order.”

7. Respondents filed counter affidavit. One P.Maheshwar Rao has sworn to the counter affidavit on behalf of the respondents. It is stated in the counter affidavit that the petitioner lifted IML stock of Rs.2,79,933/- during April 2002 and Rs.1,04,942/- during May, 2002 from IML whole sale depot and conducted business from 9.4.2002 to 10.5.2002. Para 6 of the counter

affidavit needs to be noted and it is thus:

“ 6. In reply to the averments made in para 5 of the petitioners affidavit, it is submitted that W.No.6512 of 2002 filed by the petitioner was dismissed by the Hon'ble Court. The Bank guarantee furnished by the petitioner for Rs.1.75 lakhs was invoked. The demand was raised for balance amount of Rs.3.75 lakhs towards the balance of license fee for the year 2002-2003 on the basis of 2001 census figures. The contention of the petitioner that he approached the 2nd respondent and informed that no business could be conducted by virtue of the interim suspension orders granted by the Hon'ble Court and he is not liable to pay any amount is incorrect. The further contention of the petitioner he requested to refund the license fee paid by him is incorrect. The petitioner conducted the business from 9.4.2002 to 10.5.2002. The license of the petitioner was kept in abeyance as per the interim orders of this Honourable Court in W.P.No.5842 of 2002. The said writ petition is still pending. I submit that as per the interim orders of this court dated 9.4.2002 passed in WPMP.8168 of 2002 in W.P.No.6512 of 2002, the petitioner is liable to pay the differential amount of license fee soon after publication of 2001 census figures. Hence, the demand raised by 2nd respondent which is impugned in the above writ petition is legal and valid in law.”

8. Heard learned counsel for both the parties.

9. Learned counsel appearing for the petitioner submits that the petitioner could not do the business inspite of his securing license for the year 2002-2003 because of the interim order obtained by his rival trader. He would further submit that since the petitioner did not carry on business because of the interim orders passed by this court he is entitled for remission of license fee for the excise year 2002-03 and thus the proceedings issued by 2nd respondent dated 29.10.2002 are not legal and proper and the same are liable to be set aside. In support of his submissions, reliance has been placed on the decisions of this Court in VEERABHADRA RAO v. SUPDT. OF EXCISE, VISAKHAPATNAM^[2] and MANCHIKA SRINIVAS V. COMMISSIONER OF PROHIBITION^[3]. In the first cited decision, the

petitioner therein claimed remission of the rentals payable by the excise authorities in view of the stay granted by the court preventing him from exploiting his lease from 1.10.78. It was contended by the petitioner therein that he was prevented from doing business for the full period because of the stay orders of the court. After referring Sec.20 of A.P. Excise Act and Rule 42 of A.P. Excise (Arrack and Toddy Licences General Conditions), Rules, 1969, the learned single Judge of this Court observed as follows:

“ 6. The above clause (3 of Section 20 of the Act which absolves the State from any liability to pay compensation to an abkari contractor whose shop is closed by the authority of the State is applicable only to a situation where the liquor shops are closed by the District Magistrate for preservation of public peace. As tht did not happen in this case that provision would have no application to this case. But even then, Section 20 of the Act would be still significant for its implied recognition of the right of the abkari contractor to be compensated for closure of his shops brought about by the State otherwise than in accordance with law. In other words, if a shop is ordered to be closed for reasons which are not recognized by section 20 of the Act the law assumes that the State is liable to pay compensation to the petitioner. The other legal provision which is rule 42 of the Andhra Pradesh Excise (Arrack and toddy Licences General Conditions) rules, 1969, equally recognizes this principle of liability. But that rule is equally inapplicable to this case. That rule reads thus:

“ Where a licence is withdrawn or a shop is ordered to be closed by or under the provisions of the Act, otherwise than by cancellation or suspension, no demand of rental for the period during which it was withdrawn or closed, as the case may be, may be made. But the licensee shall have no right to claim any compensation on that account, except to the refund of the proportionate licence fee and the deposit, if any.”

This rule deals with the situation where a licence is withdrawn or an arrack shop is ordered to be closed by or under the provisions of the Act. The order made by this Court preventing the petitioner from doing his business clearly does not fall under this provision. Section 20 and rule 42 are both inapplicable and out of the way of the petitioner. It follows that neither section 20 nor rule 42 could absolve

the State from its present liability to pay compensation to the abkari contractor provided the State is held in this case to have unlawfully prevented the petitioner from doing his business.”

11. In the second cited decision, the learned single Judge of this Court after referring to first cited case allowed the claim of the petitioner therein and directed the respondents to refund the proportionate license fee from 1.8.1997 to 31.3.1998.

12. The petitioner herein approached this court with a specific pleading that he did not carry on business in the excise year 2002-03 because of the stay granted by this Court in WPMP.No.7315 of 2002 in W.P.No.5842 of 2002.

13. In the counter it is contended that the petitioner lifted IML stock of Rs.2,79,933/- during April 2002 and Rs.1,04,942/- during May, 2002 from IML whole sale depot and conducted business during the period from 9.4.2002 to 10.5.2002 in which his licence was in force. There is no reply affidavit by the petitioner to controvert the statement made by the respondents in their counter.

14. Under Rule 36 of A.P.(Regulation of Wholesale Trade & Distribution and Retail Trade in Indian Liquor, Foreign Liquor, Wine and Beer) Act, 1993 if a licence is cancelled or withdrawn during the currency of this licence period the whole stock of IML shall be seized.

15. Since the petitioner claims that he could not carry on the business because of the interim stay granted in the writ petition filed by the rival trader, it is for him to surrender the stock to the Department. Such is the situation, I am of the view that the petitioner can submit representation to the 2nd respondent giving account of the stock lifted by him and also placing necessary records that he did not carry out any business due to interim orders

obtained by his rival trader in the excise year 2002-03. The petitioner shall submit his representation within one month from today to the 2nd respondent. In case, the petitioner submits such representation, 2nd respondent shall pass appropriate orders within two months thereafter.

16. Accordingly, this writ petition is disposed of. No costs.

Dated: 27-07-2006.

(B.Seshasayana Reddy,J)

tnb

**THE HONOURABLE SRI JUSTICE
B.SESHASAYANA REDDY**

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Dated: 27-07-2006.

[\[1\]](#) 2001(6) ALT 406
[\[2\]](#) 1981 AWR 346 (AP)
[\[3\]](#) 1999(4) ALT 698